IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

WP(C).No. 29580 of 2007(U)

OS.59/2004 of SUB COURT, TIRUR
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PETITIONER:

C.P.SHANAVAS, S/O.HASSAINAR HAJI,
CHAMBALI HOUSE, CHEERAN KADAPURAM,
TANUR, MALAPPURAM DISTRICT.

BY ADV. SRI.K.K.MOHAMED RAVUF

RESPONDENT:

KUTIYAMUVINTE PURAKKAL MAJEED,
S/O.MOIDEEN BAVA, RAYARIMANGALAM,
AMSOM DESOM, CHEERANKADAPURAM, TANUR,
MALAPPURAM DISTRICT.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 29580 OF 2007

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Dated this the 16th day of October, 2007.

J U D G M E N T

This writ petition is preferred against the order of the Subordinate Judge, Tirur in I.A.Nos.570/07 and 571/07 in O.S.59/04. The defendant in the suit is the petitioner before the Court below and the petition is filed for setting aside the exparte decree after condoning the delay of 812 days. The Court below on an appreciation of the entire materials decided to grant an opportunity to the petitioner and therefore directed him to deposit half of the decree amount before Court within one month and to pay a cost of Rs.3,000/-. It is aggrieved by that decision the defendant has come up with this writ petition.

2. It is true that this Court as well as the Apex Court in very many decisions have held that the defendants can be directed to furnish some security while setting aside the exparte decree. The Court below has directed for deposit of

the amount. In a case where the plaintiff ultimately succeeds, what he requires is a security for the enforcement of the decree. As the litigation may be prolonged and the amount will lie in deposit without any use, it is always desirable in such cases to direct the parties to furnish security to the satisfaction of the Court. Therefore, I modify the order of the Court below and direct the writ petitioner herein to furnish security for half of the decree amount to the satisfaction of the Court, after hearing the other side. Similarly, I also reduce the cost to be paid from Rs.3,000/- to Rs.2,000/- and I further grant time limit for furnishing security as well as for depositing the costs by six weeks from today.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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